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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 ELVIS RUIZ FRANCISCO)
JAVIER, CASTRO and EDUARDO)
11 MARTINEZ,) Case No. 2:11-cv-03088-RMP
Plaintiffs,)
12 v.)
13 DEFENDANT WESTERN
RANGE ASSOCIATION'S LR
56.1 STATEMENT OF FACTS
14 MAX FERNANDEZ and ANN)
FERNANDEZ, a Marital)
15 community; and WESTERN)
RANGE ASSOCIATION, a foreign)
16 nonprofit organization,)
Defendants.)
17

18 Pursuant to Local Rule 56.1, Defendant Western Range Association ("WRA")
19 submits this Concise Statement of Material Facts in Support of its Motion for
20 Summary Judgment.

21

UNDISPUTED MATERIAL FACTS

22 1. WRA is a non-profit organization that was created by agricultural

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1 employers to help employers and foreign workers successfully navigate the
2 intricacies of the H-2A program.

3 2. Plaintiffs Elvis Ruiz, Francisco Javier Castro, and Eduardo Martinez
4 (“Plaintiffs”) are Chilean citizens. *See* Complaint, Dkt. 1, ¶¶27-29.

5 3. Plaintiffs applied for and obtained H-2A visas to work as sheepherders
6 in the United States. *See* Complaint, Dkt. 1, ¶¶27-29.

7 4. Plaintiffs contacted WRA’s Chilean representative to apply for H-2A
8 visas. *See* Deposition of Elvis Ruiz (“Ruiz Depo.”), pg. 17; Deposition of Francisco
9 Javier Castro (“Castro Depo.”), pgs. 61-62; Deposition of Eduardo Martinez
10 (“Martinez Depo.”), pg. 47 (Exhibits 1 through 3 to the Declaration of Timothy J.
11 Bernasek (“Bernasek Decl.”)).

12 5. WRA helped Plaintiffs obtain their H-2A visas and coordinated their
13 transportation to the United States. *Id.*

14 6. Plaintiffs subsequently went to work as sheepherders for various
15 ranchers, including co-defendant Max Fernandez (“Fernandez”) from 2007-2010.
16 *See* Complaint, Dkt. 1, ¶24.

17 7. The United States Department of Labor (“USDOL”), as part of its
18 Special Procedures for sheepherders under the H-2A program, determined the pay
19 rates for plaintiffs. *See* Deposition of Dennis Richins, pgs. 169-170, (Ex. 5 to
20 Bernasek Decl.).

21 8. Fernandez supervised and managed Plaintiffs’ work on the ranch. He
22 dictated the manner and method by which their work was done. He also controlled

1 their work schedule, housing arrangement, monetary compensation, and other work
2 conditions. WRA never exercised control over Plaintiffs. *See* Ruiz Depo., pgs. 63-
3 66; Martinez Depo., pgs. 46-48; Ruiz Depo., pgs. 38-40. WRA only transfers a
4 worker at the worker's or employer's request. *See* Deposition of Dennis Richins,
5 pgs. 88-90; 168-170 (Ex. 5 to Bernasek Decl.).

6 9. All work completed by Plaintiffs was done on property owned or leased
7 by Fernandez using Fernandez's equipment. *Id.*

8 10. The USDOL investigated Plaintiffs' allegations of wrongdoing, but
9 found them to be meritless. *See* USDOL Report, Ex. 4 to Bernasek Decl. The
10 USDOL concluded, with respect to Plaintiffs' employment with Fernandez, that
11 "[o]nce they arrive at the ranch, WRA doesn't have any control over the workers, all
12 duties and assignments are made by the rancher." *Id.* at pg. 3. USDOL also found
13 that "Fernandez makes all the decisions involving pay rates above the specified
14 amount, pay dates, transportation, and hiring and firing, as well as completing the
15 workers payroll." *Id.*

16 Dated: December 3, 2012.

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DEFENDANT WESTERN RANGE ASSOCIATION'S LR 56.1 STATEMENT OF FACTS - 3

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CERTIFICATE OF SERVICE

3 I hereby certify that on December 3, 2012, I caused the foregoing document to
4 be electronically filed with the Clerk of the Court using the CM/ECF system and
5 caused it to be served by mail to the following:

Michele Besso : micheleb@nwjustice.org

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Dated: December 3, 2012.

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